

119TH CONGRESS
2D SESSION

S. _____

To impose requirements for certain Federal positions to promote
transparency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MERKLEY (for himself, Mr. KAINE, Ms. ROSEN, Ms. DUCKWORTH, Mr.
VAN HOLLEN, Mr. KIM, Mr. COONS, and Mr. REED) introduced the fol-
lowing bill; which was read twice and referred to the Committee on

A BILL

To impose requirements for certain Federal positions to
promote transparency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparency in the
5 Administration’s Business Opportunities Overseas Act” or
6 the “TABOO Act”.

7 **SEC. 2. SENSE OF CONGRESS.**

8 It is the sense of Congress that:

1 (1) Individuals serving as Special Envoys, Spe-
2 cial Representatives, Special Coordinators, Special
3 Negotiators, or working in similar positions, whether
4 in the Department of State, the Executive Office of
5 the President, or any Federal department or agency,
6 frequently exercise significant authority and rep-
7 resent the United States Government to foreign gov-
8 ernments and international organizations.

9 (2) Existing ethics, financial disclosure, and
10 conflict-of-interest requirements do not uniformly
11 apply to those individuals, particularly those working
12 in volunteer, unpaid, or advisory capacities while
13 performing duties that involve significant authority.

14 (3) The absence of uniform requirements—

15 (A) creates gaps in transparency, account-
16 ability, and oversight; and

17 (B) may allow individuals to perform sen-
18 sitive diplomatic or national security functions
19 without appropriate conflict-of-interest safe-
20 guards.

21 (4) Congress has a compelling interest in ensur-
22 ing that all individuals performing those functions
23 are subject to consistent ethics, financial disclosure,
24 and conflict-of-interest requirements, regardless of
25 title, compensation, or organizational placement.

1 (5) It is in the interest of the United States
2 to—

3 (A) establish uniform standards for ethics
4 compliance, financial interest reporting, and
5 congressional notification for individuals per-
6 forming those functions; and

7 (B) close loopholes that allow individuals
8 to avoid those requirements by working in vol-
9 unteer or advisory status.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means—

15 (A) the Committee on Foreign Relations of
16 the Senate; and

17 (B) the Committee on Foreign Affairs of
18 the House of Representatives.

19 (2) COVERED FUNCTION.—The term “covered
20 function” includes the following:

21 (A) Directing or leading negotiations on
22 behalf of the United States Government with a
23 foreign country.

1 (B) Directing or leading negotiations on
2 behalf of the United States Government with
3 international multilateral organizations.

4 (C) Any activity involving the exercise of
5 significant authority pursuant to the laws of the
6 United States in a foreign policy or national se-
7 curity context.

8 (3) COVERED POSITION.—The term “covered
9 position”—

10 (A) means a Special Envoy, Special Rep-
11 resentative, Special Coordinator, Special Nego-
12 tiator, Envoy, Representative, Coordinator, Spe-
13 cial Advisor, Senior Advisor, or other position
14 performing a covered function, regardless of
15 title, in the Executive Office of the President or
16 any Federal department or agency;

17 (B) includes a position the pay status of
18 which is uncompensated or volunteer if the indi-
19 vidual working in that position performs a cov-
20 ered function in that position; and

21 (C) does not include a position that—

22 (i) does not represent the United
23 States Government to a foreign govern-
24 ment or multinational organization; and

1 (ii) is engaged only to provide advice
2 to the President, the Executive Office of
3 the President, or any Federal agency or
4 department.

5 (4) FINANCIAL INTEREST.—

6 (A) IN GENERAL.—The term “financial in-
7 terest”, with respect to a foreign country, in-
8 cludes a financial interest in any entity, includ-
9 ing—

10 (i) an entity that maintains a contract
11 with the government of the country;

12 (ii) a state-affiliated enterprise;

13 (iii) an enterprise affiliated with a
14 government official of the country; and

15 (iv) a financial institution affiliated
16 with the government of the country or a
17 government official of the country.

18 (B) INDIVIDUAL HOLDING FINANCIAL IN-
19 TEREST.—For purposes of this Act, the term
20 “financial interest”, with respect an individual,
21 includes—

22 (i) a financial interest held by the in-
23 dividual;

24 (ii) a financial interest held by the
25 spouse of the individual; and

1 (iii) a financial interest held by any
2 member of the immediate family of the in-
3 dividual.

4 (C) RULE OF CONSTRUCTION.—The term
5 “financial interest”, with respect to a foreign
6 country—

7 (i) shall be construed as broadly as
8 possible; and

9 (ii) shall not be limited to the exam-
10 ples listed in subparagraph (A).

11 **SEC. 4. REQUIREMENTS.**

12 (a) ETHICS AND FINANCIAL DISCLOSURES.—

13 (1) BRIBERY, GRAFT, AND CONFLICTS OF IN-
14 TEREST.—Any individual working in a covered posi-
15 tion shall be deemed an officer or employee for pur-
16 poses of chapter 11 of title 18, regardless of employ-
17 ment status, compensation, or volunteer status.

18 (2) FINANCIAL DISCLOSURE REQUIREMENTS.—

19 (A) PERSONS REQUIRED TO FILE.—Sec-
20 tion 13103(f) of title 5, United States Code, is
21 amended—

22 (i) in paragraph (11), by striking “;
23 and” and inserting a semicolon;

24 (ii) in paragraph (12), by striking the
25 period at the end; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(13) an officer or employee working in a cov-
4 ered position, as defined in section 3 of the Trans-
5 parency in the Administration’s Business Opportuni-
6 ties Overseas Act.”.

7 (B) EXTENSION ON TIME FOR FILING.—
8 Section 13103(g) of title 5, United States Code,
9 is amended—

10 (i) in paragraph (1), by striking
11 “Reasonable” and inserting “Except as
12 provided in paragraph (3), reasonable”;
13 and

14 (ii) by adding at the end the fol-
15 lowing:

16 “(3) COVERED POSITIONS.—Extensions of time
17 for filing any report with respect to an officer or em-
18 ployee working in a covered position, as defined in
19 section 3 of the Transparency in the Administra-
20 tion’s Business Opportunities Overseas Act, shall
21 not exceed 30 days.”.

22 (C) TECHNICAL AND CONFORMING AMEND-
23 MENT.—Section 13102(a)(1) of title 5, United
24 States Code, is amended by inserting “and

1 paragraph (13)” after “paragraphs (1) through
2 (8)”.

3 (b) FINANCIAL INTERESTS.—

4 (1) WRITTEN CONFIRMATION.—Not later than
5 30 days after the date on which any individual be-
6 gins working in a covered position—

7 (A) the individual shall confirm in writing
8 that the individual—

9 (i) has no financial interest in any
10 foreign country with which the individual
11 will be working;

12 (ii) if a pre-existing financial interest
13 exists, will divest or place the financial in-
14 terest in a qualified blind trust, as defined
15 in section 13104(f)(3) of title 5, United
16 States Code, within 60 days of the date of
17 the written confirmation; and

18 (iii) commits to undertaking no new
19 financial interest in any foreign country
20 with which the individual will be working
21 during the 1-year period beginning on the
22 date on which the individual vacates the
23 covered position; and

1 (B) the head of the relevant office, depart-
2 ment, or agency that employs the individual
3 shall—

4 (i) review and certify the written con-
5 firmation required under subparagraph
6 (A); and

7 (ii) submit the written confirmation
8 required under subparagraph (A) and cer-
9 tification required under clause (i) of this
10 subparagraph to the appropriate congres-
11 sional committees.

12 (2) RELATION TO OTHER REQUIREMENTS.—A
13 written confirmation required under paragraph
14 (1)(A) shall be in addition to any other financial dis-
15 closure or ethics report otherwise required by law.

16 **SEC. 5. QUARTERLY SUBMISSIONS.**

17 (a) IN GENERAL.—Not later than 90 days after the
18 effective date under section 8(a), and every 90 days there-
19 after, the head of each Federal agency and department
20 shall submit to the President and the appropriate congres-
21 sional committees a list of each individual working in a
22 covered position at that Federal agency or department.

23 (b) ELEMENTS.—Each list required under subsection
24 (a) shall include, with respect to each individual working
25 in a covered position—

- 1 (1) the name and title of the individual; and
- 2 (2) a brief description of the duties of the indi-
- 3 vidual, including the countries and organizations the
- 4 individual is expected to engage with on behalf of
- 5 the United States Government in the covered posi-
- 6 tion.

7 **SEC. 6. ENFORCEMENT.**

8 (a) STATUTORY PENALTIES.—

9 (1) PENALTIES RELATING TO WRITTEN CON-

10 FIRMATION.—An individual working in a covered po-

11 sition who knowingly fails to comply with the re-

12 quirements under section 4(b)(1)(A) shall be fined

13 under title 18, imprisoned for not more than 1 year,

14 or both.

15 (2) OTHER STATUTORY PENALTIES.—An indi-

16 vidual working in a covered position who knowingly

17 fails to comply with any requirement under this Act,

18 or any amendment made by this Act—

19 (A) shall lose access to United States Gov-

20 ernment funds for staff support, facilities, trav-

21 el support, and consular services;

22 (B) shall be subject to referral to the De-

23 partment of Justice; and

24 (C) shall be subject to suspension from

25 performing any covered function until compli-

1 ance with this Act and the amendments made
2 by this Act is achieved.

3 (b) AGENCY ENFORCEMENT.—

4 (1) DESIGNATION OF ETHICS OFFICERS.—The
5 head of each Federal agency or department employ-
6 ing an individual working in a covered position shall
7 designate an ethics office responsible for compliance
8 with this Act.

9 (2) FAILURE TO SUBMIT CERTIFICATIONS.—If
10 the head of a Federal agency or department fails to
11 submit any certification under section 4(b)(1)(B) or
12 any quarterly list under section 5(a), the head of
13 that Federal agency or department shall report the
14 failure to each appropriate congressional committee
15 within 15 days of the discovery of such failure.

16 (c) ADDITIONAL CONSEQUENCES FOR NONCOMPLI-
17 ANCE.—If an individual nominated for a covered position
18 is found to be in violation of any provision of this Act,
19 or an amendment made by this Act, a committee of Con-
20 gress may—

21 (1) delay nomination hearings and confirmation
22 processes for the individual;

23 (2) recommend suspension of the duties of the
24 individual; and

1 (3) determine if referral to the Department of
2 Justice is warranted.

3 **SEC. 7. GUIDANCE.**

4 Not later than 120 days after the date of enactment
5 of this Act, the Director of the Office of Personnel Man-
6 agement and the Director of the Office of Government
7 Ethics shall issue joint guidance to implement this Act.

8 **SEC. 8. APPLICABILITY.**

9 (a) **EFFECTIVE DATE.**—All requirements, obliga-
10 tions, and prohibitions established under this Act, and the
11 amendments made by this Act, shall take effect 180 days
12 after the date of enactment of this Act.

13 (b) **CURRENT INDIVIDUALS WORKING IN COVERED**
14 **POSITIONS.**—Any individual working in a covered position
15 on the effective date under subsection (a) shall comply
16 with all the requirements of this Act, and the amendments
17 made by this Act, not later than 60 days after that effec-
18 tive date.

19 (c) **NO WAIVER OR DELAY.**—No provision of this
20 Act, nor any amendment made by this Act, nor any re-
21 quirement imposed thereunder, may be waived, delayed,
22 suspended, or otherwise modified by the Executive Office
23 of the President or any Federal agency or department.

1 (d) CONTINUING APPLICABILITY.—Compliance with
2 this Act, and the amendments made by this Act, shall be
3 a continuing condition of service in any covered position.